

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

RECEIVED

MAY 22 1998

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)	
)	
Federal - State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Proposed Third)	
Quarter 1998 Universal Service)	DA - 98-856
Contribution Factors Announced)	

COMMENTS

Comcast Cellular Communications, Inc. and Comcast Corporation (hereafter "Comcast"), submits these comments in response to the Commission's Public Notice released on May 13, 1998, regarding third quarter 1998 Universal Service contribution factors.¹ Pursuant to its rules, the Commission has established a 14-day period following publication of the Public Notice in the Federal Register for notice and comment on the proposed contribution factors.² Through the Public Notice the Commission has announced its intention to double the contribution factor for the schools and libraries and rural health care support mechanisms.

Comcast previously has identified the urgent need for the Commission to establish definitive, uniform mechanisms for CMRS carriers to determine "interstate" and

¹ Proposed Third Quarter 1998 Universal Service Contribution Factors Announced, CC Docket No. 96-45, Public Notice, DA 98-856 (May 13, 1998) (hereinafter, the "Public Notice").

² See 47 C.F.R. § 54.709 (a) (3).

No. of Copies rec'd
 List A B C D E

0211

“end user telecommunications” revenues. To date those mechanisms have not been established. As a result, Comcast must oppose any increase in any of the Universal Service contribution factors until such time as the Commission establishes workable methodologies by which wireless carriers can calculate end-user telecommunications revenues and calculate percentages which fairly represent their interstate revenues. In the absence of these essential changes the Universal Service program, CMRS carriers and their consumers will continue to be harmed.

On July 18, 1997, the Commission released an order reorganizing the board of directors of the National Exchange Carrier Association, Inc. (“NECA”), and establishing the organizational structures for the various entities administering the federal Universal Service program.³ The NECA Order attached as an Appendix a form of the Universal Service Worksheet which was subsequently approved by the OMB and became FCC Form 457.⁴ On August 4, 1997, the FCC announced by Public Notice that completed Forms 457 would have to be filed 28 days later on September 1, 1997.

Not only were the Worksheets required to be completed and filed in an extremely short period of time, but it became immediately apparent that FCC Form 457 was not well adapted for CMRS providers. Indeed, the form contemplated reporting by local

³ See Changes to the Board of Directors of the National Exchange Carriers Association, Inc.; Federal - State Joint Board on Universal Service, Report and Order and Second Order on Reconsideration, CC Docket No. 97-12, CC Docket No. 96-45, FCC 97-253 (released July 18, 1997) (the “NECA Order”). The NECA Order appeared in the Federal Register on August 1, 1997.

⁴ The Worksheet was approved by OMB on August 4, 1997.

exchange and interexchange carriers who traditionally had maintained their accounting and other records in accordance with the Uniform Systems of Accounts.

The Commission was promptly advised of the many difficulties associated with completion of the Worksheets. On August 18, 1997, Comcast joined with the Cellular Telecommunications Industry Association ("CTIA") and other concerned CMRS carriers in a meeting with Commission staff to discuss our concerns. On August 21, 1997, CTIA submitted a 9-page letter to the staff requesting clarification of various issues relating to CMRS filings. These issues remained, notwithstanding the Commission's issuance of a reconsideration order permitting contributors to provide "good faith estimates" on an interim basis.⁵ As Comcast observed in its Petition for Reconsideration of the NECA Order, "[r]elying upon totally different approaches, even in good faith, will create inequities in payment that will prove extremely difficult for the FCC to iron out, and is unfair to the program and contributors [sic] alike. Also, leaving so much to a carrier's discretion could permit too much 'gamesmanship' by carriers attempting to balance federal and state obligations."⁶

⁵ See Letter from Randall S. Coleman, Vice President for Regulatory Policy and Law of CTIA, to Jeanine Poltronieri, Associate Chief, Wireless Telecommunications Bureau, dated August 21, 1997, attached hereto as Appendix A. See also, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal - State Joint Board on Universal Service, Order on Reconsideration, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 97-21, CC Docket No. 96-45 (released August 15, 1997).

⁶ See Petition for Reconsideration of Comcast and Vanguard Cellular Systems, Inc., Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket No. 97-21, filed September 2, 1997, at 10 (the "Comcast Petition"). Among the different approaches to filling out Form 457 was that adopted by Omnipoint Communications, Inc. ("Omnipoint") purportedly at the suggestion of Commission staff.

Some nine months later, most of the issues raised by wireless carriers have not been addressed. Comcast and other wireless carriers have continued to seek resolution, but to date no relief has been obtained.⁷ Since last August, wireless carriers who are direct competitors of Comcast have been using different methodologies in completing the Universal Service Worksheet. And as Comcast predicted, competitive inequities have emerged. Not only is Comcast effectively subsidizing its competitors who have taken advantage of the Commission's current approach which permits widely varying practices in any single market, but Comcast and its competitors independently are arriving at significantly different customer assessments because of the continuing lack of Commission guidance and non-uniform reporting practices.⁸

See ex parte letter of counsel to Omnipoint filed August 21, 1997, and attached hereto as Appendix B.

⁷ In addition to raising its concerns in formal pleadings, Comcast has met with Commission staff on a number of occasions to discuss the need for changes to the current open-ended approach. See, e.g., the Comcast Petition; Comments of Comcast Corporation, In the Matter of Federal-State Joint Board on Universal Service, Report to Congress, CC Docket No. 96-45, filed January 26, 1998; and ex parte letter filed by James R. Coltharp, Senior Director of Public Policy of Comcast Corporation, dated May 12, 1998 attached hereto as Appendix C.

⁸ Unlike interexchange carriers, CMRS providers are not the beneficiaries of access charge reform, and therefore no argument can be made that the new Universal Service assessments have been offset by cost reductions. The result is that CMRS carriers generally pass through the increased costs of the Universal Service assessments to their customers. Comcast certainly understands that the Commission has permitted, and not required, carriers to assess their customers. Comcast also acknowledges that this approach eventually may result in competitively-driven decisions as to those charges. However, while Comcast would be prepared to be compete on that basis (assuming a truly non-discriminatory approach could not be achieved), it does not believe such competition should be driven by the Commission's lack of attention to the fair and non-discriminatory administration of the Universal Service program.

While Comcast acknowledges that the Commission has expressed a general desire to work with wireless carriers,⁹ the Commission now seeks to double the largest current component of the Universal Service program. This will serve to double the competitive inequities which exist with respect to CMRS reporting and contributions. And this will double the unfairness to CMRS providers, especially to carriers (such as Comcast) who did not take advantage of the Commission's lack of guidance. It will also double the unfairness to CMRS customers who continue to pay disparate charges by virtue of the delay in resolving these issues. And it is simply inconsistent with the goal of ensuring that the Commission's assessment on carriers be "competitively neutral."

Comcast respectfully requests that the Commission only take action to revise the contribution factors if it concurrently addresses the key outstanding issues regarding CMRS reporting of revenues and contributions to the program outlined above. At a minimum, the Commission must publicly confirm its intention to "true-up" past contributions once competitively neutral reporting and contribution mechanisms are established. Comcast previously has suggested that a "true-up" mechanism could be based upon the difference between a carrier's overestimated contribution and the amount that would have been assessed using a corrected, uniform approach. For ease of administration, the difference could be applied as a credit against future contributions.¹⁰

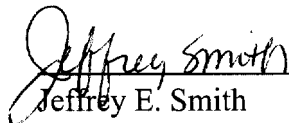
⁹ See Report in Response to Senate Bill 1768 and Conference Report on H.R. 3579, Report to Congress, FCC 98-85 (released May 8, 1998) at paragraph 217.

¹⁰ See ex parte letter of James R. Coltharp, Senior Director, Public Policy of Comcast Corporation, filed May 12, 1998.

Under no circumstance should any CMRS provider be paying disproportionately more into the Universal Service program as a result of this degree of confusion, at least not without some assurance that past and continuing discrepancies will be addressed. It is essential that the Commission not perpetuate and aggravate the current confusion and disparity by failing to act now.

Respectfully submitted,

**COMCAST CELLUAR COMMUNICATIONS,
INC.**

 LP

Jeffrey E. Smith
Senior Vice President and General Counsel
480 East Swedesford Road
Wayne, PA 19087
(610) 995-3760

COMCAST CORPORATION

 LP

Of Counsel:

James R. Coltharp
Senior Director, Public Policy
1317 F Street, N.W.
8th Floor
Washington, D.C. 20004
(202) 638-5678

Laura H. Phillips
Christina H. Burrow
DOW, LOHNES &
ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 776-2000

May 22, 1998

APPENDIX A



*Building The
Wireless Future*

August 21, 1997

CTIA

Ms. Jeanine Poltronieri
Associate Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554

Cellular
Telecommunications
Industry Association
1250 Connecticut
Avenue, N.W.
Suite 200
Washington, D.C. 20036
202-785-0081 Telephone
202-785-8203 Fax
202-736-3256 Direct Dia

**Re: Wireless Issues Raised by the Universal
Service Worksheet**

Randall S. Coleman
Vice President for
Regulatory Policy and La

**Changes to the Board of Directors of the
National Exchange Carrier Association
(CC Docket No. 97-21) and**

**Federal-State Joint Board on
Universal Service (CC Docket No. 96-45)**

Dear Jeanine:

The Cellular Telecommunications Industry Association (CTIA), on behalf of its member companies, seeks clarification of the proper procedures for Commercial Mobile Radio Services (CMRS) providers completing the Commission's Universal Service Worksheet, FCC Form 457. Given the extremely limited amount of time before the worksheet is due, in lieu of requesting a delay of the filing date, CTIA respectfully requests that the Commission promptly respond to this request. CTIA also requests that the Commission specifically afford to CMRS providers the opportunity to adjust their worksheets following the Commission's response, given the Commission's recent statement that failure to comply with the worksheet requirements could result in penalties to the offending entity.¹ Absent clarification of the worksheet requirements, CTIA believes that there is a substantial likelihood CMRS providers will not report their revenues to the Commission consistently and that, despite good faith efforts to comply with the worksheet requirements, that CMRS providers could substantially over-report or under-report their revenues in certain categories identified in the worksheet.²

^{1/} See Public Notice, "FCC Announces Non-substantive Changes to Universal Service Worksheet Instructions Released on August 4, 1997," DA No. 97-1671A (rel. Aug. 11, 1997).

^{2/} CTIA appreciates that the Common Carrier Bureau, in an August 15 Order, clarified that all reporting entities are able to rely on good faith estimates if they do not possess actual data on interstate/intrastate

Ms. Jeanine Poltronieri

August 21, 1997

Page 2

As the Commission is aware, the structure and organization of CMRS providers differ greatly from that of traditional incumbent local exchange carriers or long distance companies. CMRS licenses are issued for specific market areas that, in many cases, cross state boundaries. Equally important, CMRS providers often consolidate their operations in several license areas based on market demands. As a result, multiple licensee entities often are operated as a single unit, with a single set of books and a single subscriber base. In some cases, CMRS providers have ownership structures that include minority owners, which also affect the accounting for their systems. CMRS providers also operate without regard for state boundaries, a fact recognized by the Commission in its *Local Competition Order*. In many cases, it is not possible for a CMRS provider to know if a call is interstate or intrastate in nature because radio waves, unlike telephone lines, cannot be stopped at the state line.

These characteristics of CMRS have led many of CTIA's member companies to raise questions regarding the proper responses to the Universal Service Worksheet. In an effort to limit the burden on the Commission's resources, CTIA has compiled these questions to provide them to the Commission on a consolidated basis. Since this compilation is based on questions CTIA has received to date, there may be other questions that are not addressed in this letter.

CTIA's questions are as follows:

1. **If a CMRS provider has consolidated the operations and financial records of multiple licensee entities, may it report the revenues for those entities on a consolidated basis?**

As noted above, many CMRS providers have consolidated the operations of several licensee entities for operational and accounting purposes. Unlike incumbent LECs, which historically have been required to maintain separate books for separate legal entities, CMRS providers have not previously been required to do so. In fact, it may be impossible to make this calculation on an individual licensee basis in some instances or may require a provider to change its accounting system solely to complete Form 457. Moreover, if CMRS providers are permitted to report their revenues on a consolidated basis, there will be no effect on the Commission's ability to calculate and assess universal service contributions because the total amounts of revenue reported to the Commission will remain the same. The Commission has permitted consolidated reporting in other contexts, including TRS funding and equal

revenues. While this statement is reassuring, even with it, CTIA's members still have critical, unique issues that must be addressed and resolved prior to completing the worksheet.

Ms. Jeanine Poltronieri

August 21, 1997

Page 3

employment opportunity reports. Consolidated reporting could be accomplished by permitting CMRS providers to list all consolidated entities on a single form or separate attached sheet (that lists all included call signs and market areas) and that permits all revenues to be reported on one worksheet.

Based on initial conversations with the Common Carrier Bureau and Wireless Telecommunications Bureau staff, it appears that the Commission appreciates these concerns and may allow CMRS providers to file on a consolidated basis. Public confirmation of this determination is needed immediately, however, to forestall an enormous amount of unproductive labor and permit CMRS providers to move beyond this critical threshold issue to those covered in the remainder of this letter.

2. **If CMRS providers are not permitted to consolidate the operations and financial records of multiple licensee entities that are operated on a consolidated basis, how should the revenues of those operations be apportioned among the licensee entities?**

In the event that the Commission does not permit CMRS licensees to file on a consolidated basis, there are several alternatives for apportionment of revenues among licensee entities that are operated on a consolidated basis and it is not apparent from the instructions how such apportionment should be accomplished. In addition, regardless of the apportionment mechanism adopted by the Commission, it will be difficult for many carriers to derive the necessary information from their records, especially by September 1. For instance, many customers may be billed at addresses that are different from the areas where they use their service, so that use of billing address information may not be sufficient if the Commission were to determine that revenues should be apportioned based on the number of customers assigned to each licensee.³ Apportionment also could be based on minutes of use in each license area, but it is unlikely that many CMRS providers maintain such records. In any event, if apportionment of consolidated results is essential for the Commission, such apportionment will require considerable efforts for CMRS providers, and it will require additional time to prepare worksheets on a non-consolidated basis.

^{3/} Such an apportionment also will not address relative levels of roaming traffic among systems that are operated on a consolidated basis.

3. What methods for allocating revenues among interstate and intrastate jurisdictions will be deemed reasonable by the Commission?

As the Commission is aware, members of the CMRS industry have pending petitions for reconsideration seeking to have the Commission treat all CMRS as jurisdictionally interstate.⁴ To the extent that the Commission does not grant those petitions, it will be difficult in many cases to classify individual services and calls as interstate or intrastate in nature. In addition, carriers possess widely differing capabilities of assessing the jurisdiction of their traffic. Most would need to take traffic samples to estimate jurisdiction. CTIA member companies have sought guidance as to the treatment of several types of calls and services that could fall within the interstate classification. Those calls and services are as follows:

- Service provided in markets that cover multiple states, such as the New York MSA and adjacent RSAs, the Los Angeles MTA or the Huntington/Ashland, West Virginia/Kentucky/Ohio MSA. CMRS providers serving these markets often do not track the originating and terminating points of the calls, so they cannot tell whether the call is interstate or intrastate. Unlike LEC service, in which the originating and terminating telephone numbers can be used to determine whether a call crosses state boundaries, a wireless telephone number does not provide the location from which the call originated.
- Service provided from cell sites that cover areas in two or more states. In general, it is impossible to determine the state from which a call originated if the coverage area of the cell includes parts of two or more states. These capabilities are unlikely to evolve in the near future even as enhanced capabilities are added to wireless systems for E-9-1-1.
- Service provided on calls that begin while the customer is in one state and that end while the customer is in another state. CTIA is unaware of any Commission determination as to the jurisdictional nature of such calls.

4. How should roaming traffic be treated?

Roaming traffic occurs when a customer is outside his or her home system, and often when the customer is in a different state from the home system. Some CTIA members have concluded that, because roaming requires interaction between the

^{4/} In addition, at least one CMRS service, air-to-ground, previously has been classified as interstate by the Commission. See Allocation of the 849-851/894-896 MHz Bands, 5 FCC Rcd 3861, 3865 (1990).

Ms. Jeanine Poltronieri

August 21, 1997

Page 5

customer's home system and the system in which the roaming occurs, it should be treated as interstate in nature. In addition, many CMRS providers have implemented "follow me" types of roaming. These roaming services involve forwarding calls from the customer's home system to the system where the customer is located. CTIA members have asked whether these services should be treated differently from traditional roaming service and some have concluded that it should be treated as interstate service.

Additionally, CTIA members have raised questions regarding the proper attribution of end user roaming revenues to the home system or to the provider that ultimately handles the call. When a CMRS provider bills an end user for roaming usage that occurred outside the customer's home system, for example, all or part of the corresponding end user payments that are collected are ultimately passed to the CMRS carrier that provided the roaming service and are not "revenues" to the collecting carrier. The roaming carrier receives the revenue collected from the end-user from the home carrier, and not directly from the end user. Indeed, because different wireless carriers may use different accounting treatment of roaming revenues, Commission clarification of this issue is needed to prevent roaming revenues from either being unreported or double counted, depending upon whether the home carrier considers them end user revenue and whether the roaming carrier reports them as end user revenues.

There is no uniform approach to addressing this concern. Some CTIA members have suggested that the CMRS carrier who provides the roaming service to the roaming end user customer, and ultimately books the revenue for this service, should report the corresponding revenues on Line 40 on Form 457, even though the carrier does not bill the end user directly. If this approach is adopted then the CMRS provider who bills and collects payment from the end user for the roaming service, and then passes this payment to the CMRS carrier who provided the roaming service, should not report these amounts on Line 40 (but should report any amounts it may collect from end users in excess of the amounts passed on to the roaming carrier).⁵

^{5/}

Another approach suggested by a CTIA member would be to report on Line 40 "in-collect" revenues (those billed to the home carrier's customer when he/she is roaming on other markets) as meeting the end user definition. In contrast "out-collect" revenues (those collected from other carriers for calls placed by foreign roamers in the reporting carrier's market) should be reported on Line 28. Additionally, roamer revenues received from other carriers for long distance default treatment (a roamer making a long distance call is defaulted to the wireless carrier's chosen IXC) would fall into the Line 28 reporting category.

5. How should CMRS providers address resale issues?

The Commission's resale policies require CMRS providers to make their services available for resale, but do not require resellers to identify themselves or their end user revenues. In fact, because resellers are entitled to obtain service on the same terms and conditions available to other like customers, in some cases resale customers use the same customer agreements that are used by other large CMRS customers. Many resellers also are not aware of their regulatory obligations and do not comply with the Commission's TRS fund filing requirements, which makes it more difficult for a facilities-based CMRS provider to identify its resale customers reliably. Thus, CMRS providers may have difficulty identifying their resale customers and excluding all resale revenues from the revenues used to calculate contribution obligations. For these reasons, CTIA seeks guidance as to how CMRS providers can identify resale customers in compliance with the Commission's requirements.⁶ Because of the difficulty of being certain that a specific customer is a reseller, it appears that CMRS providers should be permitted to make good faith judgments regarding which customers are resellers for the purpose of completing the worksheet.

In addition, the instructions for the worksheet indicate that entities completing the worksheet can exclude resale revenues from their calculations only as to entities that "can reasonably be expected to contribute to support universal service." Is this statement intended to suggest that the facilities-based provider must undertake an inquiry into the financial qualifications and/or the actual intentions of the reseller to meet the universal service support obligation? CTIA seeks to confirm that a facilities-based provider may exclude revenues from the support calculation if it reasonably concludes that the entity purchasing its services is a reseller that is subject to the support obligation.

6. How should bundled offerings be treated?

CMRS providers often bundle telecommunications services, enhanced services, customer premises equipment and other non-telecommunications services available to their customers. Some CTIA members have sought guidance as to how to report the revenues from such bundles.

In light of the wide variety of bundled offerings that are typically available from a CMRS carrier, there are many possible permutations for backing out the non-

^{6/} One way of doing this is for the Commission to articulate a limited exception to its existing resale policy that permits CMRS carriers to inquire to confirm reseller status for universal service purposes.

Ms. Jeanine Poltronieri

August 21, 1997

Page 7

telecommunications features of a bundle. While CTIA recognizes that it is impractical for the FCC to provide rules that apply in every instance, permitting CMRS providers to adopt certain simplifying assumptions will be critical. Failure to adopt simplifying assumptions creates an enormous amount of unnecessary additional work for each carrier that must examine the specific features of each bundled rate plan and determine in each case the appropriate distribution for the phone, the features and the telecommunications services. One simplifying assumption would be to allow CMRS carriers to back out non-telecommunications features and equipment uniformly based on their stand-alone fair market value.

7. Hows should CMRS carriers account for fraud-related uncollectibles?

As the Commission is aware, CMRS carriers experience fraud-related uncollectible debt because of the nature of CMRS calling and the availability of cloning devices. In many cases the CMRS carrier becomes aware of alleged fraudulent calling when its customer receives a bill and questions apparently unauthorized calls. Typically the amount in question is held while the carrier, often together with a roaming partner, investigates the matter. To cover this financial contingency, most CMRS carriers place a fraud reserve on their books. This reserve is updated approximately every six months to reflect current experience with fraud uncollectibles. While the Worksheet requires that uncollectibles be factored into revenue amounts, it is not at all obvious that CMRS fraud-related uncollectibles represented in the fraud reserve should be included in a more general uncollectible category. To do so would ignore the unique fraud uncollectible issues associated with CMRS carriers and cause anomalously high uncollectibles for CMRS carriers.⁷

8. How should CMRS carriers account for universal service fees?

To the extent a CMRS carrier determines that it must pass onto end users universal service expenses in the form of additional fees, several member companies request clarification of how these fees are properly accounted for -- as telecommunications revenues or as non-telecommunications revenues? It would appear that universal

^{7/} Fraud is a multi-million dollar problem for the wireless industry each year. It is unreasonable to penalize CMRS providers by mandating that a universal service fee be paid on total gross end user revenues when a significant portion of that revenue is never collected by the CMRS providers. CTIA members suggest that Instructions for Lines 28, 39 and 49 on FCC Form 457 be revised to permit allowances for uncollectibles, including fraud. CTIA suggests that such allowance should be based on current period booked uncollectibles, even though those amounts correspond to a different reporting period. There may be a timing difference, but this is preferable to further complicating the reporting process with additional steps to estimate and then true-up the amount for uncollectibles.

Ms. Jeanine Poltronieri

August 21, 1997

Page 8

service pass-throughs are not charges for a telecommunications service, and therefore not properly classified as a telecommunications service. CTIA, however, requests confirmation of this assumption.

9. Will reporting entities be subject to penalties for reporting data that are calculated in good faith but are inconsistent with later-adopted Commission determinations regarding reporting requirements?

The Commission's August 11 public notice emphasized that reporting entities that do not provide accurate responses on the worksheet will be subject to penalties, including criminal sanctions in some cases. As the discussion above demonstrates, there is substantial uncertainty among CMRS providers about how to complete large parts of the worksheet and, absent specific Commission guidance, CTIA members and other CMRS providers will be forced to make good faith judgments regarding these issues. CTIA seeks clarification of what steps CMRS providers (and others) can take to ensure that they are not subject to penalties for reporting "incorrect" data if the Commission later determines that such good faith judgments are not consistent with the Commission's expectations of how the worksheet should be completed. CTIA appreciates that the Common Carrier Bureau on August 15 released an order clarifying that good faith estimates will be sufficient for those carriers unable to determine interstate and intrastate jurisdictional splits. CTIA seeks to confirm what the order appears to state, that is that all worksheet data furnished in good faith will not subject the service provider to non-compliance penalties.

The Commission's responses to these questions will have a substantial impact on how CMRS providers will complete the worksheet. Indeed, many CTIA members have indicated that they may be unable to complete the worksheet absent the clarifications requested in this letter. Even if CMRS providers can complete the worksheets without answers to these questions, it is likely that their responses will be inconsistent with each other and may not comport with the Commission's expectations regarding total reportable revenues and the allocation of revenues to the interstate jurisdiction. These concerns are particularly acute because, unlike incumbent LECs, CMRS providers generally have not been subject to accounting requirements such as the Uniform System of Accounts and have not been required to provide data to any regulator in forms that are similar to what is required by the worksheet. Thus, it is critical to CTIA's members and other CMRS providers that the Commission address these issues promptly.

Regardless of when the Commission responds to this request, CMRS providers also should be afforded additional time to prepare and submit amended worksheets. The

Ms. Jeanine Poltronieri

August 21, 1997

Page 9

Commission's responses to the questions outlined above are likely to require new calculations and additional analysis before CMRS providers are able to complete and submit their worksheets. Given the complexity of most providers' accounting systems, extracting the necessary information also is likely to be a time-consuming process. Without additional time, it will be impossible for CMRS providers to compile accurate information necessary to that task. Indeed, unlike incumbent LECs, CMRS providers are likely to need the time to create the information required for the worksheet from scratch, rather than simply filling in figures from existing accounting records. This process will be especially difficult and time consuming in this case because CMRS providers never before have been required to provide information at this level of detail. Accordingly, the Commission should permit carriers to amend or modify their Form 457's to insure accurate responses.

Please inform me if any questions should arise in connection with this letter.

Respectfully submitted,



Randall S. Coleman

cc: Chairman Reed Hundt
Commissioner James Quello
Commissioner Rachelle Chong
Commissioner Susan Ness
Regina Keeney
Daniel Phythyon
Richard Metzger
Thomas Boasberg
Paul Gallant
Kathleen Franco
James Casserly
Lisa Gelb
Karen Gulick
David Krech
Diane Law
Tejal Mehta

APPENDIX B

PIPER & MARBURY

L.L.P.

1200 NINETEENTH STREET, N.W.
WASHINGTON, D.C. 20036-2430

202-861-3900
FAX: 202-223-2085

WRITER'S DIRECT NUMBER
202-861-6457
FAX: 202-861-4160
tschmitz@pipemar.com

BALTIMORE
NEW YORK
PHILADELPHIA
EASTON

August 21, 1997

HAND DELIVERY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington,, DC 20554

Re: Ex Parte Presentation -- CC Docket 96-45
Universal Service Fund Worksheet Issues

Dear Mr. Caton,

Pursuant to Section 1.1206 of the Commission's Rules, this letter is to advise you that Mark O'Connor and myself, on behalf of Omnipoint Communications, Inc. ("OCI") met with Jim Lande and Diane Law of the of the Common Carrier Bureau on August 20, 1997. The purpose of the visit was to discuss the Universal Service Fund worksheet, and ask questions on accounting for various types of revenues and service offerings. A list of the issues, which was provided to the FCC staff, addressed during the meeting is attached to this letter.

When asked whether each licensee in Omnipoint's corporate structure was required to file a Universal Service Fund worksheet, the staff clarified that it is the billing entity, and not the actual licensee, that is responsible for filing a Universal Service Fund worksheet. The staff further clarified that, for purposes of the September, 1997 filing, a filer was required to make a good faith estimate to determine what percentage of revenue was derived from interstate as opposed to intrastate traffic, and that based on current Commission D.E.M. statistics, 15 percent is the nationwide average for a carrier's percentage of interstate traffic minutes. In addition, a filer could make a good faith estimate and "decouple" revenues received to reflect what portion of the revenue-reflected an information service as opposed to a telecommunications service. The staff further

Mr. William F. Caton

August 21, 1997

Page 2

clarified that pre-billed discounts were not revenues received, and therefore did not have to be reported as such.

OCI asked for clarification on how to report revenues received for prepaid accounts, and what changes could be made in subsequent reporting periods to reflect a refund issued to a prepaid customer that later canceled service. The staff stated that while the prepaid account would reflect revenue that should be reported when received, proper treatment of the "loss" of revenue when the account was subsequently refunded is not yet resolved.

In accordance with the Commission's Rules, I hereby submit one original and one copy of this letter for inclusion in the above-referenced docket.

Sincerely,



Teresa M. Schmitz
Counsel for Omnipoint
Communications, Inc.

Enclosure

cc: D. Law (FCC)
J. Lande (FCC)
K. Abernathy (AirTouch)
M. Altschul (CTIA)

OMNIPPOINT -- USE WORKSHEET ISSUES

1. *Affiliates/Subsidiaries Required to File.*
 - a. Omnipoint has many PCS licensees/intermediary subsidiaries, all wholly-owned by Omnipoint Corporation.
 - b. Omnipoint has some licensees with overlapping licenses (e.g., New York A and D licenses), as well as licenses that are contiguous and operated as a single system.
2. *Information Services*
 - a. Internet, Short Message Service, Stock Quote Service
 - b. Bundled information service/telecom. service
3. *Interstate/Intrastate Separation for CMRS*
4. *Pre-bill Discounts & "Total Revenues"*
5. *Local/Toll/ Long Distance for CMRS operators*
6. *Pre-pay accounts/refunds*

APPENDIX C

**COMCAST
CORPORATION**



EXTERNAL AFFAIRS — WASHINGTON
1317 F STREET, NW • WASHINGTON DC 20004 • (202) 638-5678

May 12, 1998

Ex Parte

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Federal-State Joint Board on Universal Service
CC Docket No. 96-45

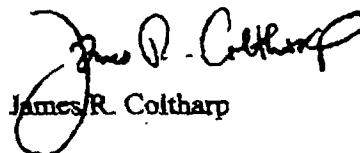
Dear Ms. Salas:

On May 11th 1998, James Coltharp of Comcast Corporation met with Ruth Milkman, Deputy Bureau Chief, as well as Valerie Yates and Lori Wright of the Common Carrier Bureau to discuss issues in the above referenced proceeding. We discussed the need for prompt action by the Commission to provide a definitive and consistent mechanism for calculating "interstate" end user revenues for Universal Service contributions. Comcast also raised issues identified in the attached handout.

In addition, Comcast files for the record in this proceeding a legal memorandum from Cole Raywid & Braverman that discusses the Commission's legal authority to issue an interpretive rule clarifying these questions without additional notice and comment.

Please contact the undersigned for any questions.

Sincerely,


James R. Coltharp

CC: Ruth Milkman
Valerie Yates
Lori Wright

Attachments:

COMCAST CORPORATION

Determining "Interstate" Wireless Revenues for Universal Service Contributions

Timing

The Commission should provide guidance on a definitive and consistent mechanism for estimates of "interstate" end user revenues by wireless carriers as soon as possible.

Wireless carriers applying a wide range of "good faith" estimates have been operating amid confusion and competitive disparities since September 1997. The current processes of estimating "interstate" revenues and of using varying approaches to derive "end user" revenues are neither fair nor competitively neutral with respect to wireless carriers. Absent conclusive guidance from the Commission, customers will continue to confront wide variation in billing practices among different industry segments, and among carriers within a specific industry segment, which inevitably causes substantial, albeit unintended, customer confusion and competitive disadvantages. This confusion and uncertainty will only serve to undermine the legitimate effort to advance universal service.

The Commission should provide guidance, at least by adopting an interim mechanism, without allowing for the delays resulting from seeking notice and comment. The Commission (or the Common Carrier Bureau) has authority to establish a definitive and consistent mechanism through Public Notice.

Methodology and Proxies

The Commission's next step must be to promote accurate revenue reporting without imposing the burdens of excessively detailed cost and revenue reports on carriers or the Commission.

The Commission may desire to establish (1) a fixed charge, or (2) a definitive methodology by which wireless carriers estimate "interstate" revenues, beginning with the use of a common market definition, appropriate time periods for forming estimates, and assumptions related to traffic patterns. In addition, the Commission will need to establish a definitive methodology by which wireless carriers not subject to the Uniform System of Accounts will derive "end user" revenues in the context of industry practices of bundling service with CPE and features.

Due to the immediate need for guidance, the FCC should provide an interim measure, select a reasonable proxy based on the universe of (wireless) interstate estimates already submitted by carriers. As necessary, carriers could seek waivers of the proxy allowing for a presumption of reasonableness based on a showing of unique market attributes.

The FCC could establish a single proxy or a choice of proxies depending on whether the Commission seeks to distinguish different MTA characteristics – however, carriers must not be permitted to average values for diverse markets or MTAs in order to artificially reduce their universal service contribution. Accordingly, as an interim mechanism, the FCC might choose either:

- (1) A single proxy with an allowance for waivers to make appropriate distinctions, because a larger group of carriers may find that the single proxy does not fit their market conditions; or,
- (2) Two or more proxies to distinguish market characteristics (e.g., Washington, D.C. and Lubbock, Texas are likely to have very different interstate traffic patterns). Even with multiple proxies, the FCC might still retain an allowance for waivers, or might simply conclude that the choice of proxies provides the necessary distinctions among markets without imposing processing burdens on the agency.

While it is important to make an informed choice among these methodologies, time is of the essence—because the status quo perpetuates confusion, uncertainty, and competitive unfairness.

The Commission also should avoid excessive and unnecessary reporting burdens on carriers that lack the resources or the established, compatible accounting procedures (e.g., a Uniform System of Accounts) of incumbent LECs or large DCS to respond to highly detailed reporting requirements.

Establishing a "True Up"

The Commission should develop a simple framework for a "true-up" to adjust for carriers that have overestimated and overpaid contributions relative to their competitors.

Once it has established a proxy, the Commission should move ahead to "true up" past assessments. In conjunction with the interim proxy, the FCC should announce a review of the various methodologies adopted by wireless carriers on FCC Form 457, and provide a mechanism to "true up" past assessments.

A true up mechanism could simply calculate the value of the difference between a carrier's overestimated contribution to USF as compared to the amount that would have been assessed using the adopted interim approach. For ease of administration, the value of the true up could be applied as a credit toward future contributions until the credit is exhausted.

Nonetheless, the considerable time expired since the implementation of Form 457 and the significant disparities among contributions by carriers operating in similar, competitive markets warrant action to ease the confusion and address unintended competitive disparities in the wireless marketplace.

COLE, RAYWID & BRAVERMAN, L.L.P.

JOHN P. COLE, JR.
BURT A. BRAVERMAN
ROBERT L. JAMES
JOHN D. SEIVER
WESLEY R. HEPPLER
PAUL GLUST
DAVID M. SILVERMAN
JAMES F. IRELAND, III
STEVEN J. MORVITZ
CHRISTOPHER W. SAVAGE
ANN FLOWERS
ROBERT D. SCOTT, JR.
SUSAN WHELAN WESTFALL
THERESA A. ZETTERBERG
KARLYN D. STANLEY
JOHN DAVIDSON THOMAS
JOHN C. DODGE
FREDERICK W. GIROUX
MARIA T. BROWNE
DONNA C. RATTLEY
THOMAS SCOTT THOMPSON
ADAM S. CALDWELL
SANDRA GREINER
JAMES W. TOMLINSON
MARK S. KRISTIANSEN

ADMITTED IN MARYLAND ONLY

ATTORNEYS AT LAW
SECOND FLOOR
1919 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006-3458
(202) 659-8750

ALAN RAYWID
(1930-1991)
OF COUNSEL
FRANCES J. CHETWIND

FACSIMILE
(202) 452-0067

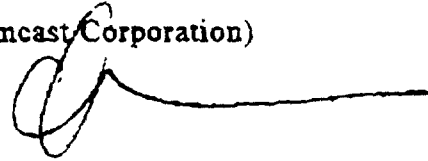
INTERNET
WWW.CRLAW.COM

WRITER'S DIRECT DIAL
(202) 828-0811

WRITER'S E-MAIL ADDRESS
CSAVAGE@CRLAW.COM

MEMORANDUM

To: James R. Coltharp (Comcast Corporation)

From: Christopher W. Savage 

Date: May 12, 1998

Re: **Commission Authority To Modify Form 457 Requirements For CMRS Providers Without Further Notice And Comment**

1. Introduction.

This memorandum was prepared at your request for filing with the Federal Communications Commission (the "Commission") in connection with Commercial Mobile Radio Service ("CMRS") providers' use of Form 457.

On August 15, 1997, the Commission ruled that, on a "interim" basis, universal service fund ("USF") contributors that cannot directly identify interstate revenues must make estimates using a methodology that they in "good faith" believe will produce "reasonably accurate" results.¹ CMRS providers may be using different estimation methods because wireless markets and billing records do not readily identify

¹ Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service, *Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking*, CC Docket Nos. 97-21, 96-45, 12 FCC Rcd 12444 (August 15, 1997) ("August 15 Order") at ¶ 21.